



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/890,490	07/09/97	ANTHONY FENN	F3141(V)

IM22/1008

PATENT DEPARTMENT  
UNILEVER UNITED STATES INC  
45 RIVER ROAD  
EDGEWATER NJ 07020

EXAMINER
NESSLER, C

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 10/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Advisory Action**

Application No.

08/890,490

Applicant(s)

Fenn et al

Examiner

Cynthia L. Nessler

Group Art Unit

1761



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires six months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Sep 14, 1999 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Sep 14 and 21, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☒ will not be entered because:
- ☒ they raise new issues that would require further consideration and/or search. (See note below).
  - ☐ they raise the issue of new matter. (See note below).
  - ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: The recitations of an ice particle size upon recrystallization of less than 20 um as measured in accordance with example V, and of AFP Type III HPLC 12 raises new issues.

- ☐ Applicant's response has overcome the following rejection(s):

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
The Cheeney declaration shows that the Clemmings product of Ex. 1 does not inherently have the recited aspect ratio. But the declaration does not show why it would not have been obvious to adjust the aspect ratio to a desired value.
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):
- Claims allowed: \_\_\_\_\_
- Claims objected to: \_\_\_\_\_
- Claims rejected: 1, 2, and 4-10

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☒ Other The Cheeney declaration does not show why the recited aspect ratio is unexpected. See the 1st paragraph of pg. 3, the last paragraph of pg 5, and all of pg 6 of the Final Rejection. The Sztchlo declaration does not provide a proper comparison because the amounts of ingredients, esp. AFP, do not match those of Ex. II of the specification (for comparison of Warren and the present invention).

*Cynthia L. Nessler*  
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ART UNIT 1761